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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Aug 30, 2022**

SEAN F. McAVOY, CLERK

7 UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

Case No.: 2:22-CR-54-RMP

10 Plaintiff,

Plea Agreement

11  
12 v.

13 THEODORE JOSEPH SEYMOUR,

14 Defendant.

15  
16 Plaintiff United States of America, by and through Vanessa R. Waldref, United  
17 States Attorney the Eastern District of Washington, and Richard R. Barker, Assistant  
18 United States Attorney for the Eastern District of Washington, and THEODORE  
19 JOSEPH SEYMOUR ("Defendant"), both individually and by and through Defendant's  
20 counsel, Deputy Federal Defender Lorinda Youngcourt, agree to the following Plea  
21 Agreement.

22 1. Guilty Plea and Maximum Statutory Penalties

23 Defendant agrees to enter a plea of guilty to Count 1 of the Indictment filed on  
24 May 3, 2022, which charges Defendant with Assault with a Dangerous Weapon in  
25 Indian Country, in violation of 18 U.S.C. §§ 113(a)(3), 1153, a Class C felony.

26 Defendant understands that the following potential penalties apply:

- 27 a. a term of imprisonment of up to ten years;  
28 b. a term of supervised release of up to 10 years;

- c. a fine of up to \$250,000;
- d. restitution; and
- e. a \$100 special penalty assessment.

2. Supervised Release

Defendant understands that if Defendant violates any condition of Defendant's supervised release, the Court may revoke Defendant's term of supervised release, and require Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, up to the following terms:

- a. 5 years in prison if the offense that resulted in the term of Supervised Release is a class A felony,
- b. 3 years in prison if the offense that resulted in the term of Supervised Release is a class B felony, and/or
- c. 2 years in prison if the offense that resulted in the term of Supervised Release is a class C felony.

Accordingly, Defendant understands that if Defendant commits one or more violations of supervised release, Defendant could serve a total term of incarceration greater than the maximum sentence authorized by statute for Defendant's offense(s) of conviction.

3. The Court is Not a Party to this Plea Agreement

The Court is not a party to this Plea Agreement and may accept or reject it. Defendant acknowledges that no promises of any type have been made to Defendant with respect to the sentence the Court will impose in this matter.

Defendant understands the following:

- a. sentencing is a matter solely within the discretion of the Court;
- b. the Court is under no obligation to accept any recommendations made by the United States or Defendant;

- c. the Court will obtain an independent report and sentencing recommendation from the United States Probation Office;
- d. the Court may exercise its discretion to impose any sentence it deems appropriate, up to the statutory maximum penalties;
- e. the Court is required to consider the applicable range set forth in the United States Sentencing Guidelines, but may depart upward or downward under certain circumstances; and
- f. the Court may reject recommendations made by the United States or Defendant, and that will not be a basis for Defendant to withdraw from this Plea Agreement or Defendant's guilty plea.

4. Potential Immigration Consequences of Guilty Plea

If Defendant is not a citizen of the United States, Defendant understands the following:

- a. pleading guilty in this case may have immigration consequences;
- b. a broad range of federal crimes may result in Defendant's removal from the United States, including the offense to which Defendant is pleading guilty;
- c. removal from the United States and other immigration consequences are the subject of separate proceedings; and
- d. no one, including Defendant's attorney or the Court, can predict with absolute certainty the effect of a federal conviction on Defendant's immigration status.

Defendant affirms that Defendant is knowingly, intelligently, and voluntarily pleading guilty as set forth in this Plea Agreement, regardless of any immigration consequences that Defendant's guilty plea may entail.

5. Waiver of Constitutional Rights

Defendant understands that by entering this guilty plea, Defendant is knowingly and voluntarily waiving certain constitutional rights, including the following:

- a. the right to a jury trial;
- b. the right to see, hear and question the witnesses;
- c. the right to remain silent at trial;
- d. the right to testify at trial; and
- e. the right to compel witnesses to testify.

While Defendant is waiving certain constitutional rights, Defendant understands that Defendant retains the right to be assisted by an attorney through the sentencing proceedings in this case and any direct appeal of Defendant's conviction and sentence, and that an attorney will be appointed at no cost if Defendant cannot afford to hire an attorney.

Defendant understands and agrees that any defense motions currently pending before the Court are mooted by this Plea Agreement, and Defendant expressly waives Defendant's right to bring any additional pretrial motions.

6. Elements of the Offense

The United States and Defendant agree that in order to convict Defendant of Assault with a Dangerous Weapon in Indian Country, in violation of 18 U.S.C. §§ 113(a)(3), 1153, the United States would have to prove the following beyond a reasonable doubt.

- a. *First*, on or about September 11, 2021, in the Eastern District of Washington, Defendant assaulted E.J. by intentionally using a display of force that reasonably caused E.J. to fear immediate bodily harm;
- b. *Second*, Defendant acted with the intent to do bodily harm to E.J.;
- c. *Third*, Defendant used a dangerous weapon;
- d. *Fourth*, the assault took place within the exterior boundaries of the Colville Indian Reservation, in Indian country;
- e. *Fifth*, Defendant is an Indian and an enrolled member of the Confederated Tribes of the Colville Reservation; and

1           f.     *Sixth*, the Confederated Tribes of the Colville Reservation is a  
2                   federally-recognized tribe.

3           7.     Factual Basis and Statement of Facts

4           On November 23, 2021, SEYMOUR, an enrolled member of the Colville Tribe  
5           fired a long-barreled firearm into the air in close proximity to E.J. The incident was  
6           captured on video, which depicts SEYMOUR demanding property from E.J. while  
7           pointing the firearm at E.J., who was inside a car. Individuals off camera are heard  
8           yelling, “Stop, Theo,” which is short for THEODORE. Notwithstanding these pleas,  
9           SEYMOUR yelled “Give me your shit” before firing the weapon in the air.  
10          SEYMOUR ultimately did not take any property from E.J., who was able to drive  
11          away from the scene. The assault occurred near Inchelium, Washington and within the  
12          external boundaries of the Confederated Tribes of the Colville Reservation.

13          8.     The United States’ Agreement

14          The United States Attorney’s Office for the Eastern District of Washington  
15          agrees that at the time of sentencing, the United States will move to dismiss Count 2  
16          of the Indictment filed on May 3, 2022, which charges Defendant with Attempt  
17          Robbery in Indian Country.

18          The United States Attorney’s Office for the Eastern District of Washington  
19          agrees not to bring additional charges against Defendant based on information in its  
20          possession at the time of this Plea Agreement that arise from conduct that is either  
21          charged in the Indictment or identified in discovery produced in this case, unless  
22          Defendant breaches this Plea Agreement before sentencing.

23          9.     United States Sentencing Guidelines Calculations

24          Defendant understands and acknowledges that the United States Sentencing  
25          Guidelines (“U.S.S.G.” or “Guidelines”) apply and that the Court will determine  
26          Defendant’s advisory range at the time of sentencing, pursuant to the Guidelines.  
27          Defendant and the United States agree to the following Guidelines calculations.

1           a.     Base Offense Level

2           The United States and the Defendant agree that the base offense level for  
3 Assault with a Dangerous Weapon in Indian Country is 14. *See* U.S.S.G. §2A2.2(a).

4           b.     Special Offense Characteristics

5           The United States and the Defendant agree that Defendant's base offense level  
6 is increased by 5 levels because a firearm was discharged. U.S.S.G. § 2A2.2(b)(2)(A).

7           The United States and the Defendant agree that Defendant's base offense level  
8 is increased by 2 levels because the assault was motivated by a payment or offer of  
9 money or other thing of value. *See* U.S.S.G. § 2A2.2(b)(5).

10          c.     Acceptance of Responsibility

11          The United States will recommend that Defendant receive a three-level  
12 downward adjustment for acceptance of responsibility, pursuant to U.S.S.G.  
13 § 3E1.1(a), (b), if Defendant does the following:

- 14               i.     accepts this Plea Agreement;  
15               ii.    enters a guilty plea at the first Court hearing that takes place  
16                      after the United States offers this Plea Agreement;  
17               iii.   demonstrates recognition and affirmative acceptance of  
18                      Defendant's personal responsibility for Defendant's criminal  
19                      conduct;  
20               iv.    provides complete and accurate information during the  
21                      sentencing process; and  
22               v.     does not commit any obstructive conduct.

23          Defendant and the United States agree that at its option and on written notice to  
24 Defendant, the United States may elect not to recommend a reduction for acceptance  
25 of responsibility if, prior to the imposition of sentence, Defendant is charged with, or  
26 convicted of, any criminal offense, or if Defendant tests positive for any controlled  
27 substance.

28          d.     No Other Agreements

1 The United States and Defendant have no other agreements regarding the  
2 Guidelines or the application of any Guidelines enhancements, departures, or  
3 variances. Defendant understands and acknowledges that the United States is free to  
4 make any sentencing arguments it sees fit, including arguments arising from  
5 Defendant's uncharged conduct, conduct set forth in charges that will be dismissed  
6 pursuant to this Agreement, and Defendant's relevant conduct.

7 e. Criminal History

8 The United States and Defendant have no agreement and make no  
9 representations about Defendant's criminal history category, which will be determined  
10 by the Court after the United States Probation Office prepares and discloses a  
11 Presentence Investigative Report.

12 10. Incarceration

13 The United States agrees to recommend a sentence within the advisory  
14 Sentencing Guidelines as determined by the Court.

15 Defendant may recommend any legal sentence.

16 11. Supervised Release

17 The United States and Defendant each agree to recommend 3 years of  
18 supervised release. Defendant agrees that the Court's decision regarding the  
19 conditions of Defendant's Supervised Release is final and non-appealable; that is,  
20 even if Defendant is unhappy with the conditions of Supervised Release ordered by  
21 the Court, that will not be a basis for Defendant to withdraw Defendant's guilty plea,  
22 withdraw from this Plea Agreement, or appeal Defendant's conviction, sentence, or  
23 any term of Supervised Release.

24 The United States and Defendant agree to recommend that in addition to the  
25 standard conditions of supervised release imposed in all cases in this District, the  
26 Court should also impose the following conditions:

- 27 a. The United States Probation Officer may conduct, upon reasonable  
28 suspicion, and with or without notice, a search of Defendant's



1 person, residences, offices, vehicles, belongings, and areas under  
2 Defendant's exclusive or joint control.

3 b. Defendant shall participate and complete such drug testing and  
4 drug treatment programs as the Probation Officer directs.

5 c. Defendant shall complete mental health evaluations and treatment,  
6 including taking medications prescribed by the treatment provider.  
7 Defendant shall allow reciprocal release of information between  
8 the Probation Officer and the treatment provider. Defendant shall  
9 contribute to the cost of treatment according to the Defendant's  
10 ability.

11 12. Criminal Fine

12 The United States and Defendant agree to recommend that the Court not impose  
13 any fine in this case.

14 13. Judicial Forfeiture

15 Defendant agrees to voluntarily forfeit and relinquish to the United States all  
16 right, title and interest in all assets listed herein, and hereby agrees to execute any and  
17 all forms and pleadings necessary to effectuate such forfeiture of assets, including any  
18 firearms and ammunition involved or used in the commission of the offense.

19 Defendant stipulates that Defendant is the sole owner of the assets listed above  
20 and that no one else has an interest in these assets.

21 Defendant acknowledges that the assets listed above, which Defendant is  
22 agreeing to forfeit, are subject to forfeiture as property used or intended to be used in  
23 any manner or part to commit or to facilitate the commission of the offense to which  
24 Defendant is pleading guilty.

25 Defendant agrees to take all steps requested by the United States to pass clear  
26 title to these assets to the United States, and to testify truthfully in any forfeiture  
27 proceeding.



1 Defendant agrees to hold harmless all law enforcement agents/officers, and the  
2 United States, its agents, and its employees from any claims whatsoever arising in  
3 connection with the seizure and/or forfeiture of the assets listed above.

4 Defendant waives further notice of any federal, state or local proceedings  
5 involving the forfeiture of the seized assets that Defendant is agreeing to forfeit in this  
6 Plea Agreement.

7 Defendant waives all constitutional, equitable and statutory challenges in any  
8 manner (including direct appeal, habeas corpus, or any other means) to any forfeiture  
9 carried out in accordance with this Plea Agreement on any grounds, including that the  
10 forfeiture constitutes an excessive fine or punishment.

11 Defendant knowingly and voluntarily waives Defendant's right to a jury trial on  
12 the forfeiture of these assets.

13 Defendant waives oral pronouncement of forfeiture at the time of sentencing,  
14 and any defects that may pertain to forfeiture.

15 14. Mandatory Special Penalty Assessment

16 Defendant agrees to pay the \$100 mandatory special penalty assessment to the  
17 Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C. § 3013.

18 15. Restitution

19 The United States and Defendant agree that restitution is appropriate and  
20 mandatory, without regard to Defendant's economic situation, to identifiable victims  
21 who have suffered physical injury or pecuniary loss, pursuant to 18 U.S.C. §§ 3663A,  
22 3664.

23 Pursuant to 18 U.S.C. § 3663(a)(3), Defendant voluntarily agrees to pay  
24 restitution for all losses caused by Defendant's individual conduct, in exchange for the  
25 United States not bringing additional potential charges, regardless of whether counts  
26 associated with such losses will be dismissed as part of this Plea Agreement. With  
27 respect to restitution, the United States and Defendant agree to the following:

28 a. Restitution Amount and Interest

1 The United States and Defendant stipulate and agree that, pursuant to 18 U.S.C.  
2 §§ 3663, 3663A and 3664, the Court should order restitution in an amount to be  
3 determined at or before sentencing, and that any interest on this restitution amount, if  
4 any, should be waived.

5 b. Payments

6 To the extent restitution is ordered, the United States and Defendant agree that  
7 the Court will set a restitution payment schedule based on Defendant's financial  
8 circumstances. 18 U.S.C. § 3664(f)(2), (3)(A). Regardless, Defendant agrees to pay  
9 not less than 10% of Defendant's net monthly income towards restitution.

10 c. Treasury Offset Program and Collection

11 Defendant understands the Treasury Offset Program ("TOP") collects  
12 delinquent debts owed to federal agencies. If applicable, the TOP may take part or all  
13 of Defendant's federal tax refund, federal retirement benefits, or other federal benefits  
14 and apply these monies to Defendant's restitution obligations. 26 U.S.C. § 6402(d);  
15 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

16 Defendant understands that the United States may, notwithstanding the Court-  
17 imposed payment schedule, pursue other avenues to ensure the restitution obligation is  
18 satisfied, including, but not limited to, garnishment of available funds, wages, or  
19 assets. 18 U.S.C. §§ 3572, 3613, and 3664(m). Nothing in this acknowledgment shall  
20 be construed to limit Defendant's ability to assert any specifically identified  
21 exemptions as provided by law, except as set forth in this Plea Agreement. Until a  
22 fine or restitution order is paid in full, Defendant agrees fully to disclose all assets in  
23 which Defendant has any interest or over which Defendant exercises control, directly  
24 or indirectly, including those held by a spouse, nominee or third party. Until such  
25 time as the fine or restitution order is paid in full, Defendant agrees to provide  
26 waivers, consents, or releases requested by the U.S. Attorney's Office to access  
27 records to verify the financial information.

28 d. Notifications and Waivers

1 Defendant agrees to notify the Court and the United States of any material  
2 change in Defendant's economic circumstances (e.g., inheritances, monetary gifts,  
3 changed employment, or income increases) that might affect Defendant's ability to  
4 pay restitution. 18 U.S.C. § 3664(k). Defendant agrees to notify the United States of  
5 any address change within 30 days of that change. *See* 18 U.S.C. § 3612(b)(1)(F).  
6 These obligations ceases when Defendant's restitution is paid-in-full.

7 Defendant acknowledges that the Court's decision regarding restitution is final  
8 and non-appealable; that is, even if Defendant is unhappy with the amount of  
9 restitution ordered by the Court, that will not be a basis for Defendant to withdraw  
10 Defendant's guilty plea, withdraw from this Plea Agreement, or appeal Defendant's  
11 conviction, sentence, or restitution order.

12 16. Payments While Incarcerated

13 If Defendant lacks the financial resources to pay the monetary obligations  
14 imposed by the Court, Defendant agrees to earn money toward these obligations by  
15 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

16 17. Additional Violations of Law Can Void Plea Agreement

17 The United States and Defendant agree that the United States may, at its option  
18 and upon written notice to the Defendant, withdraw from this Plea Agreement or  
19 modify its sentencing recommendation if, prior to the imposition of sentence,  
20 Defendant is charged with or convicted of any criminal offense or tests positive for  
21 any controlled substance.

22 18. Waiver of Appeal Rights

23 Defendant understands that Defendant has a limited right to appeal or challenge  
24 Defendant's conviction and the sentence imposed by the Court.

25 Defendant expressly waives all of Defendant's rights to appeal Defendant's  
26 conviction and the sentence the Court imposes.

27 Defendant expressly waives Defendant's right to appeal any fine, term of  
28 supervised release, or restitution order imposed by the Court.

1 Defendant expressly waives the right to file any post-conviction motion  
2 attacking Defendant's conviction and sentence, including a motion pursuant to 28  
3 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from  
4 information not now known by Defendant and which, in the exercise of due diligence,  
5 Defendant could not know by the time the Court imposes sentence.

6 Nothing in this Plea Agreement shall preclude the United States from opposing  
7 any post-conviction motion for a reduction of sentence or other attack upon the  
8 conviction or sentence, including, but not limited to, writ of habeas corpus  
9 proceedings brought pursuant to 28 U.S.C. § 2255.

10 19. Compassionate Release

11 In consideration for the benefits Defendant is receiving under the terms of this  
12 Plea Agreement, Defendant expressly waives Defendant's right to bring any motion  
13 for Compassionate Release other than a motion arising from one of the specific bases  
14 set forth in this paragraph of this Plea Agreement. The United States retains the right  
15 to oppose, on any basis, any motion Defendant files for Compassionate Release.

16 The only bases on which Defendant may file a motion for Compassionate  
17 Release in the Eastern District of Washington are the following:

18 b. Medical Condition of Defendant.

- 19 i. Defendant is suffering from a terminal illness (i.e., a serious  
20 and advanced illness with an end of life trajectory). A  
21 specific prognosis of life expectancy (i.e., a probability of  
22 death within a specific time period) is not required.  
23 Examples include metastatic solid-tumor cancer,  
24 amyotrophic lateral sclerosis (ALS), end-stage organ  
25 disease, and advanced dementia; or  
26 ii. Defendant is suffering from a serious physical or medical  
27 condition, a serious functional or cognitive impairment, or  
28 deteriorating physical or mental health because of the aging

1 process that substantially diminishes the ability of the  
2 defendant to provide self-care within the environment of a  
3 correctional facility and from which Defendant is not  
4 expected to recover.

5 c. Age of Defendant.

- 6 i. Defendant is at least 65 years old, is experiencing a serious  
7 deterioration in physical or mental health because of the  
8 aging process; and has served at least 10 years or 75 percent  
9 of Defendant's term of imprisonment, whichever is less; or  
10 ii. Defendant is at least 70 years old and has served at least 30  
11 years in prison pursuant to a sentence imposed under 18  
12 U.S.C. § 3559(c) for the offense or offenses for which  
13 Defendant is imprisoned.

14 d. Family Circumstances.

- 15 i. The caregiver of Defendant's minor child or children has  
16 died or become incapacitated, and Defendant is the only  
17 available caregiver for Defendant's minor child or children;  
18 or  
19 ii. Defendant's spouse or registered partner has become  
20 incapacitated, and Defendant is the only available caregiver  
21 for Defendant's spouse or registered partner.

22 e. Subsequent Reduction to Mandatory Sentence.

- 23 i. Defendant pleaded guilty to an offense which, on the date of  
24 Defendant's guilty plea, carried a mandatory minimum  
25 sentence; and  
26 ii. after the entry of judgment, the length of the mandatory  
27 minimum sentence for Defendant's offense of conviction  
28 was reduced by a change in the law; and

1                   iii.       the application of the reduced mandatory minimum sentence  
2                               would result in Defendant receiving a lower overall  
3                               sentence.

4                   f.       Ineffective Assistance of Counsel.

5                   i.       Defendant seeks Compassionate Release based on a claim of  
6                               ineffective assistance of counsel arising from information  
7                               that Defendant both

8                               1.       did not know at the time of Defendant's guilty plea,  
9                               and

10                              2.       could not have known, in the exercise of due  
11                               diligence, at the time the Court imposed sentence.

12       20.    Withdrawal or Vacatur of Defendant's Plea

13       Should Defendant successfully move to withdraw from this Plea Agreement or  
14       should Defendant's conviction be set aside, vacated, reversed, or dismissed under any  
15       circumstance, then:

16               a.       this Plea Agreement shall become null and void;

17               b.       the United States may prosecute Defendant on all available  
18                       charges;

19               c.       The United States may reinstate any counts that have been  
20                       dismissed, have been superseded by the filing of another charging  
21                       instrument, or were not charged because of this Plea Agreement;  
22                       and

23               d.       the United States may file any new charges that would otherwise  
24                       be barred by this Plea Agreement.

25       The decision to pursue any or all of these options is solely in the discretion of  
26       the United States Attorney's Office.

27       Defendant agrees to waive any objections, motions, and/or defenses Defendant  
28       might have to the United States' decisions to seek, reinstate, or reinitiate charges if a



1 count of conviction is withdrawn, set aside, vacated, reversed, or dismissed, including  
2 any claim that the United States has violated Double Jeopardy.

3 Defendant agrees not to raise any objections based on the passage of time,  
4 including but not limited to, alleged violations of any statutes of limitation or any  
5 objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth  
6 Amendment.

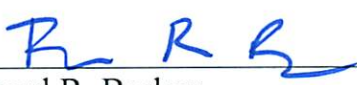
7 21. Integration Clause


8 The United States and Defendant acknowledge that this document constitutes  
9 the entire Plea Agreement between the United States and Defendant, and no other  
10 promises, agreements, or conditions exist between the United States and Defendant  
11 concerning the resolution of the case. This Plea Agreement is binding only on the  
12 United States Attorney's Office for the Eastern District of Washington, and cannot  
13 bind other federal, state, or local authorities. The United States and Defendant agree  
14 that this Agreement cannot be modified except in a writing that is signed by the  
15 United States and Defendant.

16 Approvals and Signatures

17 Agreed and submitted on behalf of the United States Attorney's Office for the  
18 Eastern District of Washington.

19 Vanessa R. Waldref  
20 United States Attorney

21   
22 Richard R. Barker  
23 Assistant United States Attorney

24   
25 Date

26 I have read this Plea Agreement and I have carefully reviewed and discussed  
27 every part of this Plea Agreement with my attorney. I understand the terms of this  
28 Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and  
voluntarily. I have consulted with my attorney about my rights, I understand those  
rights, and I am satisfied with the representation of my attorney in this case. No other

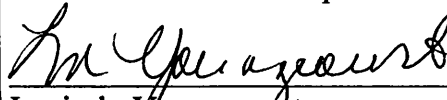


1 promises or inducements have been made to me, other than those contained in this  
2 Plea Agreement. No one has threatened or forced me in any way to enter into this  
3 Plea Agreement. I agree to plead guilty because I am guilty.

4   
5 THEODORE JOSEPH SEYMOUR  
6 Defendant

8-11-22  
Date

7 I have read the Plea Agreement and have discussed the contents of the  
8 agreement with my client. The Plea Agreement accurately and completely sets forth  
9 the entirety of the agreement between the parties. I concur in my client's decision to  
10 plead guilty as set forth in the Plea Agreement. There is no legal reason why the  
11 Court should not accept Defendant's guilty plea.

12   
13 Lorinda Youngcourt  
14 Attorney for Defendant

8/5/2022  
Date